



2003 – 2018:  
Key Compliance Points after 15 Years of the FCC's EEO Rules

**Stephen Hartzell**

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.

August 28, 2018

# Overview

## Five Main Requirements:

1. Nondiscrimination
2. General EEO Program
3. Wide dissemination—vacancy-specific outreach
4. “Menu option” outreach activities—non-vacancy specific outreach
5. Paperwork—recordkeeping and reporting

FCC’s EEO FAQ’s are available at

[www.fcc.gov/general/eo-frequently-asked-questions#block-menu-block-4](http://www.fcc.gov/general/eo-frequently-asked-questions#block-menu-block-4)

# Scope of the EEO Rules

- Nondiscrimination applies to all
  - AM, FM, TV, Class A TV, LPTV
  - However, religious broadcasters can establish religious belief or affiliation as job requirement
- EEO Program:
  - Station “employment units” (same market, at least one common employee)
  - 5 or more full-time employees (30+ hour/week)
    - Owner an “Employee”?
      - No if, 20% or greater ownership interest and no single owner has more than 50%, or
      - No if, greater than 50% ownership interest
  - Part-time positions still under consideration?

# Nondiscrimination (All Stations)

- FCC prohibits discrimination based on
  - Race
  - Color
  - Religion
  - Sex
  - National Origin
  - (and Retaliation)
- What about veteran's status, age, disabilities, etc.?
- FCC nondiscrimination rules apply to all stations
- FCC defers to EEOC (and other agencies) on complaints
- Must periodically report complaints to FCC

# EEO Program Requirements – Generally

- 5 or more full-time employees (at least 30 hours per week)
- Must establish procedures to review and manage EEO program
- Must communicate EEO program to employees
- Must communicate EEO program to outside organizations
- Must conduct a continuing program to exclude all unlawful forms of prejudice or discrimination
- Must continually review station practices to ensure equal opportunities (self assessment)

# Wide Dissemination Recruitment (Prong 1)

- Must recruit for full-time positions by “widely disseminating” vacancy information to your station’s community
- Develop and use a list of recruitment sources sufficient to reach a broad section of the community
- Single-source and “non-public” recruitment almost always insufficient
- Internet-only recruitment is now acceptable, but . . . .
- Station must continuously analyze productivity of recruitment efforts—make modifications if necessary (i.e., add new sources or develop better relationships with sources)



# When is wide dissemination not required?

- “Exigent Circumstances”: FCC recognizes that recruitment may not be feasible in “exigent circumstances,” but that such circumstances are the exception, not the rule
- Certain Hires: Internal promotions (FT to FT), temporary hires, and interns, but recruitment must occur before a temporary hire is retained on a permanent basis
- Religious Broadcasters: Can limit recruitment by religious affiliation for positions where religious affiliation is required

# Notification to Community Groups

- Publicize how community organizations can request to be added to station's "wide dissemination" list
  - Over the Air
  - Website
  - Local Publications
- Provide recruitment notices to organizations requesting notice ("Prong 2" sources)
- Keep giving notice until the source says to stop
- Common deficiency at audit time





# Menu Option Outreach Activities (Prong 3)

- Select from menu of 16 specific outreach initiatives
  - Employment units with 5-10 employees must complete at least 2 “credits” over two-year period
  - Employment units in small markets must complete at least 2 “credits” over two-year period
  - Employment units in larger markets with more than 10 employees must complete at least 4 “credits” over two-year period
- Station must have “meaningful involvement” in the initiative to claim credit
  - E.g., lending a name and airing spots may not be enough
- Record keeping is critical
- Be an over-achiever! Do more than the minimum just in case

# Menu Option Outreach Activities

- (i) Participation in at least four job fairs by station personnel who have substantial responsibility in making hiring decisions;
- (ii) Hosting of at least one job fair;
- (iii) Co-sponsoring of at least one job fair with organizations in the business and professional community whose membership includes substantial participation by women and minorities;
- (iv) Participation in at least four events, including conventions, career days, workshops, and similar activities, sponsored by organizations representing groups present in the community interested in broadcast employment issues;
- (v) Participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;
- (vi) Sponsorship of at least two events in the community designed to inform and educate members of the public about employment opportunities in broadcasting;
- (vii) Establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment;
- (viii) Participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting;



# Menu Option Outreach Activities

- (ix) Establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions;
- (x) Establishment of a mentoring program for station personnel;
- (xi) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation by women and minorities;
- (xii) Provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;
- (xiii) Participation in job banks, Internet programs, and other programs designed to promote outreach generally (i.e., outreach that is not primarily directed to providing notification of specific job vacancies);
- (xiv) Provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting;
- (xv) Provision of training to personnel of unaffiliated non-profit organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions;
- (xvi) Participation in other activities designed by the station reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.

# Periodic Self-Assessment

As part of FCC EEO compliance, stations must periodically analyze measures taken to:

- Disseminate the station's EEO program to job applicants and employees;
- Review seniority practices to ensure that such practices are nondiscriminatory;
- Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based upon race, national origin, color, religion, or sex discrimination;
- Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion or sex over another;
- Ensure that promotions are made in a nondiscriminatory manner;
- Where union agreements exist, cooperate with the union or unions in the development of programs to ensure all persons of equal opportunity for employment, irrespective of race, national origin, color, religion, or sex, and include an effective nondiscrimination clause in new or renegotiated union agreements; and
- Avoid the use of selection techniques or tests that have the effect of discriminating against any person based on race, national origin, color, religion, or sex.



# Record Keeping

- Listings of all full-time job vacancies filled by the station
- For each vacancy, the recruitment sources used to fill the vacancy
- Dated copies of all advertisements, bulletins, letters, faxes, emails, or other communications announcing vacancies
- Documentation necessary to demonstrate performance of the menu option outreach initiatives
- The total number of interviewees for each vacancy and the referral source for each interviewee
- The date each vacancy was filled and the recruitment source that referred the hiree
- This is where the rubber meets the road

# Reporting Requirements

- Annual EEO Public File Report
- Annual Employment Report (FCC Form 395-B) (suspended)
- EEO Program Report (FCC Form 396) (renewal time)
- Model EEO Program Report (FCC Form 396-A) (new station/acquisition)
- Mid-Term Report (FCC Form 397) (current proceeding)



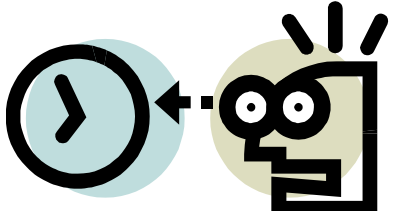
# Annual EEO Public File Report

- Due in Public Inspection File and station website each year
  - Ohio stations: June 1
  - Virginia stations: June 1
  - North Carolina stations: August 1
- No FCC form
  - Sample format in State Association EEO Guide
- File with FCC in ~~three~~ four instances:
  - License Renewal (with Form 396)
  - Mid-term Review (with Form 397)
  - FCC Audit
  - Sometimes required as part of a reporting requirement following violations



# OPIF System <https://publicfiles.fcc.gov>

**Beware the time stamp!**



Basic Info Additional

- Status:
- License Expires:
- Status Date:
- Equal Employment Opportunity Records**
- Facility Id.:
- Community of License:
- Service:
- Facility Type:

Date Uploaded
07/30/2018 09:54 AM
08/01/2017 5:00 PM
08/01/2016 10:34 AM
08/03/2015 2:20 PM
07/31/2014 4:54 PM
07/31/2013 09:38 AM



# Annual EEO Public File Report Must Contain:

- A list of all full-time vacancies filled by the station during the prior one-year period, identified by job title
- For each such vacancy, the recruitment source(s) used to fill the specific vacancy
- The recruitment source that referred the hiree for each full-time vacancy
- Data reflecting the total number of persons interviewed for full-time vacancies during the relevant period, and, for each recruitment source used in connection with any such vacancies, the total number of interviewees referred by that source
- A list and brief description of the menu option outreach activities undertaken during the relevant period

# Annual Employment Report (Form 395-B)

- Reinstated but currently suspended
- Why am I even talking about this form?
- When effective, must be filed with FCC by September 30 of each year
- Use FCC Form 395-B
- Provide statistical data on gender, race, and ethnicity of all employees
- FCC still considering whether this will be a public document



# Broadcast EEO Program Report (Form 396)

- Must accompany license renewal application
- All stations
- Attach two most recent EEO Public File Reports
- Discrimination complaints:

DISCRIMINATION COMPLAINTS. Have any pending or resolved complaints been filed during this license term before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the station(s)?

If so, provide a brief description of the complaint(s), including the persons involved, the date of the filing, the court or agency, the file number (if any), and the disposition or current status of the matter.

- Auto-importation into OPIF
- [www.fcc.gov/media/helpful-tips-form-396#block-menu-block-4](http://www.fcc.gov/media/helpful-tips-form-396#block-menu-block-4)
- License renewal cycle gears up in 2019 (that's next year!)

# Broadcast Mid-Term EEO Report (Form 397)

- Current proceeding (eliminate?)
- Must be filed on 4-year anniversary of renewal filing deadline
- Two questions:
  - More than 4 full time employees (if TV) or 10 full time employees (if radio)
  - Who's responsible for station's EEO program?
- Attach two most recent annual EEO Public File Reports
- Auto-importation into OPIF



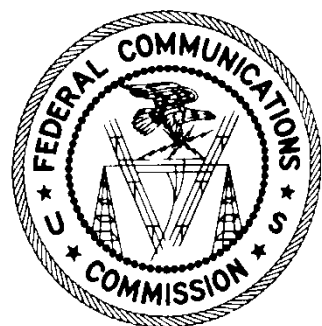
# Enforcement Mechanisms

The FCC will . . .



- Conduct random audits of 5 percent of all licensees each year
- Conduct random inquiries (i.e., request data covering any period of the license term)
- Review EEO performance at renewal (FCC Form 396 & EEO Public File Reports)
- Review EEO performance at mid-term (FCC Form 397 & EEO Public File Reports)

. . . and the public can file complaints too



# FCC EEO Audit Letter

“Dear Station Manager:

In accordance with the provisions of 47 C.F.R. § 73.2080(f)(4) of the Commission’s Equal Employment Opportunity (EEO) rules (a copy of which is attached), your employment unit has been randomly selected for an audit of its EEO program.”

## TRANSLATION:

We want records.

And more records.

And yet more records.



# EEO Audit Procedures

- Letters sent three times per year
- Starting in 2018, FCC sends by email
- Respond by uploading response to OPIF
- FCC's reply comes by email
- OPIF, OPIF, OPIF

# FCC Sanctions

EEO violations may result in:

- Admonishments
- Reporting conditions
- Forfeitures (fines)
- Renewal of license for shorter term
- Designation for hearing for possible revocation of license or denial of renewal
- Sanctions are determined on a case-by-case basis



# Summary

Remember, compliance with the FCC's EEO rules requires:

- ✓ Nondiscrimination
- ✓ General EEO program
- ✓ Wide dissemination, including notifications to requesting organizations
- ✓ Menu option outreach initiatives
- ✓ Self-Assessment
- ✓ Recordkeeping and reporting
- ✓ Deliberate approach – no “auto-pilot”!

# Questions?

Stephen Hartzell

[shartzell@brookspierce.com](mailto:shartzell@brookspierce.com)

Brooks, Pierce, McLendon,  
Humphrey & Leonard, L.L.P.

150 Fayetteville Street, Ste. 1700, Raleigh, NC 27601

P.O. Box 1800, Raleigh, NC 27602

(919) 839-0300

[www.brookspierce.com](http://www.brookspierce.com)

